

CHILDREN'S HEALTH AND ENVIRONMENT COMMITTEE

DATE: May 19, 2005

CALLED TO ORDER: 6:00 p.m.

ADJOURNED: 6:58 p.m.

ATTENDANCE

ATTENDING MEMBERS

Angela Mansfield, Chair
Patrice Abduallah
Jim Bradford
Susie Day
Sherron Franklin
Ron Gibson
Scott Keller
William Oliver
Lincoln Plowman

ABSENT MEMBERS

AGENDA

PROPOSAL NO. 45, 2005 - amends the Code by establishing nonsmoking areas
"Do Pass As Amended" Vote: 6-3

CHILDREN'S HEALTH AND ENVIRONMENT COMMITTEE

The Children's Health and Environment Committee of the City-County Council met on Thursday, May 19, 2005. Chair Angela Mansfield called the meeting to order at 6:00 p.m. with the following members present: Patrice Abdullah, Jim Bradford, Susie Day, Sherron Franklin, Ron Gibson, Scott Keller, William Oliver, and Lincoln Plowman. Councillors Greg Bowes, Lonnell Conley, Mary Moriarty Adams, Marilyn Pfisterer, and Steve Talley were also in attendance.

PROPOSAL NO. 45, 2005 - amends the Code by establishing nonsmoking areas

Chair Mansfield welcomed new Committee members Sherron Franklin, Ron Gibson, and Lincoln Plowman. She stated that some additional materials have been provided to all Committee members from presentations made at previous hearings for easy reference. At the full Council meeting on May 9, 2005, Proposal No. 45, 2005 was returned to Committee for further study. Following that action, several Council members began working immediately to address the concerns expressed by other Council members and tried to incorporate as many reasonable changes as possible as a result of suggestions heard on the floor. Chair Mansfield stated that Councillor Talley, President of the Council, will present these proposed amendments.

Councillor Talley thanked the Committee for hosting another hearing on this issue. He reviewed the changes as proposed in Exhibit A as follows:

- Sec. 616-102 (I) on page three of Exhibit A, item (3) was changed to end with the words "calendar year end," eliminating the December 31, 2004 date.
- Sec. 616-204 on page 4 was stricken entirely, so that no outdoor areas are covered.
- In the new Sec. 616-204 on page 4, the words "in operation on February 7, 2005" were stricken from item (a) (7).
- A new item (8) was added to Sec. 616-204 on page 5 to read "Any bowling alley."
- Item (9) in Sec. 616-204 on page 5 was changed to:
 - Change the age in item (b) from 21 to 18.
 - Eliminate item (e) that states "Is not a restaurant that primarily sells food."
 - Eliminates item (f) (i) and renumbers and restates item (f) (ii), again changing the age limit from 21 to 18.
- In Sec. 616-401 (d) on page 6, the age limit was also changed to 21 from 18.
- In Sec. 616-501 on page 7 of Exhibit A, the words "No Smoking" were added and the words "conforming to the requirements of Section 616-301" were stricken, so that the final sentence reads: "Smoking shall be prohibited in any place in which a property owner posts a 'No Smoking' sign."

- The final amendment changes the effective date of the ordinance in Section 3 to March 1, 2006.

Councillor Gibson moved, seconded by Councillor Keller, to "Amend" Proposal No. 45, 2005 as per Exhibit A.

Councillor Day asked for a simple explanation of where smoking is allowed and where it is not. Councillor Bowes stated that bars that hold an alcohol permit can receive an exemption if they do not allow customers over the age of 18. Bowling alleys, tobacco bars, private residences (as long as they do not serve as a day care center or nursing care facility), family-owned businesses where no customers enter, employee vehicles where the driver is the only occupant of the car, 20% of hotel rooms, private clubs and rooms in nursing homes where all occupants agree in writing may all allow smoking. All outdoor references were eliminated, including the 10-foot regulation from entrances. Those places where smoking is prohibited are any public areas, enclosed areas, places of employment, laundromats, elevators, polling places, etc. Councillor Day asked if restaurants are required to prohibit smoking. Councillor Bowes said if a restaurant does not hold an alcohol permit, they must be smokefree. If the restaurant holds an alcohol permit and does not allow patrons under the age of 18, they can file for an exemption.

Councillor Franklin asked if she is correct in understanding that this ordinance does not apply to excluded cities. Councillor Bowes said that this is correct, and a Council ordinance does not have authority over the excluded cities. Councillor Franklin said that the only way it would apply to excluded cities would be if the Marion County Health Department (MCHD) then adopts the same ordinance County-wide. Councillor Bowes said that this is his understanding.

Councillor Bradford said that he asked at the last meeting if MCHD has the ability to enforce this ordinance in excluded cities. He said that if the Council adopts this ordinance, and then MCHD adopts it, they can then dictate to the excluded cities without their councils having any say in the matter. Chair Mansfield said that MCHD has County-wide jurisdiction, but they would hold public hearings on the matter and take all the appropriate steps before passing such an ordinance, where citizens of the excluded cities could have input. Councillor Bradford said that these hearings would still only be held through MCHD, and the elected officials in these excluded cities would have no say in the matter. To say that this ordinance does not affect excluded cities is sending a false message.

Councillor Bradford stated that these amendments do not help high-end restaurants like Ruth's Chris and St. Elmo's Steakhouses. He said that these restaurants will become over-18 establishments and eliminate lots of opportunities for family dining. This will drastically affect Broad Ripple and eliminate almost all of the family outing venues. He said that he saw a previous amendment just a few minutes before Committee that excluded restaurants, and this new amendment does not address his concerns.

Councillor Bradford moved, seconded by Councillor Day, to "Table" Proposal No. 45, 2005. The motion failed by a vote of 3-6, with Councillors Bradford, Day and Plowman casting the affirmative votes.

Councillor Keller said that since outdoor areas are no longer included under this ordinance, there are many patios and areas in Broad Ripple where the outdoor areas can be designated as smoking areas, if the establishment still wishes to allow patrons under the age of 18.

Councillor Gibson thanked Chair Mansfield and Councillor Bowes on all their hard work toward legislation that helps to promote good health. He said that there have been some very tough conversations this past week, and he thanked President Talley for his leadership on this issue. He said that as a businessman, he is torn about this issue from a business standpoint and a health standpoint. He said that he has had input today from the Mayor and the faith-based community that have added to this dilemma. He said that it is no secret that he is a Christian and has strong faith-based ties. He added that much of the dangerous exposure of secondhand smoke affects African Americans and hampers their chances for healthy lifestyles and quality living. He said that he was going to offer an amendment to exclude restaurants, but had second thoughts because he feels it is important to stand up and do what is right to protect the health of all citizens. Therefore, he supports the amendment President Talley has presented.

Councillor Bradford said that while many of the restaurants in Broad Ripple have outdoor seating areas, patrons must still pass through the common dining area to reach the bar and outdoor seating. He said that it does not make sense that bowling alleys, where children are encouraged, can allow smoking, but a separate bar room in a restaurant, where children are not allowed, cannot. He said that this issue needs to be tabled, as it will affect many businesses. He said that the month of May is one of the busiest, most profitable times of the year for restaurants, and the City will be asking these businesses for an additional 1% tax for the stadium, but then want to dictate what customers they can allow into their establishment. He said that this is a sad moment and this ordinance is a bad law which allows government to reach in and tell businesses what to do. He said that he will remind supporters of this ordinance when these businesses fail, property tax revenues decline, and Broad Ripple once again becomes all over-18 bar establishments, that this result is their fault.

Councillor Franklin said that everyone wants their way and no one seems willing to compromise. She said that people need to understand that they cannot always get everything they want every time. She said that she believes the proposal should move forward as a start in the right direction to do something now. She said that this ordinance is not set in stone and can be amended in the future if it is found to be too much of a hardship.

Councillor Pfisterer said that she agrees with Councillor Gibson about the leadership spending a lot of time and effort on this issue. She said that she, however, is in opposition to this ordinance for many reasons. She said that there has been concern that these new amendments exempt some but not others and there seems to be a class element attached. She said that her main concern, which she has not heard expressed at any meeting, is with regards to enforcement. In Bloomington, police officers were taken off the street to enforce their non-smoking ordinance, and she feels this is an inappropriate use of an already overburdened public safety force.

Chair Mansfield said that the issue of enforcement has been discussed, and the intent is that the enforcement will be more complaint-based and can be handled with inspectors already in place. While public safety officials have the authority to enforce any ordinance, this responsibility will lie mostly with inspectors. She said that in the case of Bloomington, their community wanted a special push to show that this ordinance was not optional and that the city meant business.

Councillor Keller said that with regards to Councillor Bradford's statement about this ordinance hurting race-month business, this proposal does not go into effect until March of 2006. He said that bowling alleys mostly only allow smoking in their lounge areas, where children are not permitted. He added that the Committee received an excessive amount of petitions from the Hispanic community supporting the ordinance. Many Hispanic residents serve as busboys and dishwashers in these establishments, and he feels protecting these citizens is another reason to support the proposal. Councillor Bradford said that, like bowling alleys, restaurants also have lounges where children are not allowed and smoking should be.

Chair Mansfield called for public testimony and asked those wishing to speak to keep their comments limited to the amendments presented this evening, as several public forums for general comment have already been allowed.

Jesse Davidson, citizen, said that he is a non-smoker who was diagnosed with throat cancer in 2002, and this was attributed to secondhand smoke. He said that physical assault is against the law and police are supposed to protect citizens from such things, and this is just another form of physical assault. He said that he has rights and should be afforded the same protection.

Samuel Kruse, citizen, stated that the finding and intents that have been presented are not clear to all. He said that the comment that smoking is allowed in personal residences insinuates that the Council could include personal residences as an enclosed area.

Tonya Miller Bailey, citizen, stated that these amendments help businesses and restaurants and still allow them to make choices. She said that there has been a lot of pressure from the industry and people like John Livengood of the Restaurant Association to compromise. She said that these amendments provide too many

exemptions and compromise on people's health. She said that statistics are being presented with no credibility about the loss in profits in order to scare off the smoking ban. The ordinance has been watered down because people are more concerned about financial loss than the loss of life.

Danny Sparks, Department of Public Works employee, said that he has issues with Sec. 616-203 where public employees are not allowed to smoke, even though children are not allowed in these areas. Chair Mansfield said that this is not a new amendment and was already passed previously. Mr. Sparks said that he still does not understand why private employees can smoke in their vehicles but city employees cannot, even though there are no children in their vehicles or garage areas.

Mark Fisher, Chamber of Commerce, said that other than the exemption for bowling alleys, they are in support of the changes and appreciate the Committee's efforts at compromise.

Maria Chavet, citizen, stated that she is a registered nurse and she does not understand why comments are only allowed on the amendments, as the language is all interdependent. She said that these amendments affect the bigger picture. Chair Mansfield stated that there has already been ample opportunity for public testimony on the bigger picture of smokefree environments, and that is why she is limiting tonight's testimony to the amendments presented.

Matt Hall, Hall's Restaurants, said that amendments change with every hearing, and the public needs the opportunity to respond to the entire issue. He asked for another public hearing to let citizens have a chance to formulate a proper response.

Mark Webb, Indiana Licensed Beverage Association, thanked the Committee for the dialogue and said that some progress has been made. He said that the Association disagrees with the Council making smoking in restaurants an age issue. He added that he also opposes the exemption of bowling alleys, which freely allows children.

Reverend Pamela M. Pinkney, No Fear but God Assembly, stated that these amendments are a good step in the right direction. This country was established under "In God We Trust" and the right of all citizens to be healthy and prosper. She said that the government cannot make money off of dead people, and God's commandments, as well as federal laws, tell people "Thou shalt not kill." She said that all children are not of a particular age, and everyone is someone's child, and therefore should be protected. She introduced Rabbi Lew Weiss, who read a letter signed by several clergy leaders in the community supporting the ordinance (attached as Exhibit B).

Mary Wyman, citizen, stated that this is another case of partiality, and the ban should be across the board and apply to all or not apply to any.

Tim Filler, citizen, thanked the Committee for including restaurants and not allowing separate sections, as those do not really protect citizens. He said that he would like to see a more comprehensive ban, but this is a good start.

John Livengood, Restaurant and Hospitality Association, said that a technical amendment needs to be made to the ordinance with reference to the 210 liquor license, which is only a license for the old city limits. He added that with regards to hotel rooms, once a room key is turned over to a customer, that is no longer public space. He said that he was close to supporting the compromises until he realized that separate bar areas in restaurants would not also be exempted. He said that while he applauds the efforts to compromise, they have not gone far enough for him to support.

Jim Clark, citizen, urged the Committee to consider a ban across the board and not exempt anyone. The argument that people will stop eating, drinking, or staying in hotels is simply unfounded, and if there are no exemptions, people will learn to adjust. He said that cities that have passed strict bans have actually seen an increase in employee productivity and business profits.

Hal Yeagy, Slippery Noodle Inn, stated that he appreciates the lowering of the age from 21 to 18, but still these amendments do not allow him to offer family dining during the day, which he likes to do for convention guests. He said that this ordinance does not provide a definition of a bowling alley, and he asked if he puts a bowling lane in his hallway in the restaurant, if he would then qualify as a bowling alley.

Joe Wilson, bar owner, said that the Board of Health says that food preparers in restaurants must use rubber gloves, but only about two to three percent actually do. He said that MCHD does not do a good job enforcing those ordinances already in place, and inspectors do not respond in a timely fashion, and therefore, he does not believe the proper enforcement will be available.

The motion to "Amend" Proposal No. 45, 2005 as per Exhibit A carried by a vote of 6-3, with Councillors Bradford, Day and Plowman casting the negative votes.

Councillor Plowman moved, seconded by Councillor Franklin, to "Amend" Proposal No. 45, 2005 as per Exhibit C.

Councillor Franklin asked if this language to further exclude the excluded cities is accepted, if that will change Councillor Plowman's vote for the overall proposal. Councillor Plowman stated that he will withhold his answer to that until a later time. Councillor Talley urged Committee members to support this amendment. The motion to "Amend" Proposal No. 45, 2005 as per Exhibit C carried by a vote of 9-0.

Councillor Abdullah moved, seconded by Councillors Keller and Franklin, to send Proposal No. 45, 2005 to the full Council with a "Do Pass As Amended"

recommendation. The motion carried by a vote of 6-3, with Councillors Bradford, Day and Plowman casting the negative votes.

There being no further business, and upon motion duly made, the meeting was adjourned at 6:58 p.m.

Respectfully Submitted,

Angela Mansfield, Chair

AM/ag